NORFOLK & W. RY. CO. *v.* HARMAN.

Nov. 23, 1905.

[52 S. E. 368.]

1. Carriers—Bills of Lading—Construction.—A bill of lading, made out on a form used for the transportation of live stock, was issued to cover a shipment of live stock and also of household goods. One clause of the bill required the shipper to give notice of his claim as a condition precedent to his right to recover "for loss or injury to said animals." Held, that the shipper was not required to give notice of a claim for injury to his household goods before suing for damages on account of such injury.

2. Trial—Instructions—Disregard of Evidence.—In an action against a carrier for injuries to goods in transit, a charge that the bill of lading constitutes the contract between the parties and that the jury must disregard parol evidence in conflict therewith was properly refused, as leaving the jury to review the rulings of the court in admitting testimony and to decide for themselves whether any evidence conflicted with the bill of lading, whereas no evidence was admitted to which defendant excepted as inadmissible.

3. Carriers—Bills of Lading—Construction.—A bill of lading having on it the characters "Rel. Val. Lts. [or Ltd.] 5 cwt." will not, in the absence of evidence on the subject, be construed as an agreement limiting the value of the property covered by the bill to five dollars per hundred pounds, especially in view of another clause of the bill of lading placing a different and higher valuation upon certain of the property.

4. Appeal—Harmless Error—Modification of Instructions.—In an action against a carrier for injury to property in transit, defendant requested the court to charge that the jury must, under the bill of lading, estimate the damage on the basis of five dollars per hundred pounds weight. The court gave the charge, subject to the modification, "provided the jury believes the bill of lading was a special contract," etc. There was in fact nothing on the bill of lading which the court could as a matter of law declare to constitute a contract fixing the value of the goods at five dollars per hundred pounds. Held, that the modification of the charge was not prejudicial to defendant.

WOOD'S ADM'X *v.* SOUTHERN RY. CO.

Dec. 7, 1905.

[52 S. E. 371.]

1. Master and Servant—Injuries to Servant—Duties of Master—Safe Appliances.—Where a handhold on the manhole of an engine tender, while primarily used to raise the manhole cover, is also commonly used, without objection from the railroad, by brakemen and

others as the most convenient and safe way to assist them in getting on and off the tender, the railroad is bound to exercise ordinary care to see that such handhole is in a reasonably safe condition for the use to which the brakeman and other employees put it.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 173, 174.]

2. Same—Actions—Questions for Jury.—In an action against a railroad for the death of a brakeman, evidence held sufficient to require the submission to the jury of the question whether the death of the brakeman was not to be attributed to the negligence of the railroad in failing to keep a handhold on the tender on which the brakeman was riding in a reasonably safe condition.

3. Evidence—Weight and Sufficiency—Preponderance of Proof.—Plaintiff in an action for personal injuries is not required to prove his case beyond a reasonable doubt, but all that is required to make out a prima facie case is to make it appear more probable that the injury was the proximate result of defendant's negligence than of anything else.

[Ed. Note.—For cases in point, see vol. 37, Cent. Dig. Negligence, § 267.]

4. Master and Servant—Injuries to Servant—Contributory Negligence—Sufficiency of Evidence.—In an action against a railroad for the death of a brakeman, alleged to have been caused by the giving way of a manhole cover, to the handhold on which the brakeman was clinging while getting off the tender, evidence held to authorize a finding that the brakeman was not guilty of contributory negligence in making use of the handhold while getting off the tender.

FISHER'S ADM'R *v.* CHESAPEAKE & O. RY. CO.

Dec. 7, 1905.

[52 S. E. 373.]

1. Master and Servant—Injuries to Servant—Degree of Care Required—Safe Place to Work.—It is the duty of a master to exercise ordinary care to provide for the safety of his servant while engaged in the discharge of his duties, and to that end he must use ordinary care to furnish a reasonably safe place to work.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 173, 174, 179.]

2. Same—Ordinary Care.—Ordinary care is such care as reasonable and prudent men use under like circumstances in providing safe and suitable appliances and instrumentalities for the work to be done and in providing generally for the safety of the servant in the course of his employment; regard being had to the work and difficulties and dangers attending it.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 173, 174, 179.]